

Exhibit 5

1 STATE OF ALASKA

2 THE REGULATORY COMMISSION OF ALASKA

3 Before Commissioners:

Kate Giard, Chairman
Dave Harbour
Mark K. Johnson
Anthony A. Price
James S. Strandberg

7 In the Matter of the Petition by GCI)
8 COMMUNICATIONS CORP. d/b/a GENERAL)
9 COMMUNICATION, INC., and d/b/a GCI for)
10 Arbitration under Section 252 of the)
11 Telecommunications Act of 1996 with the)
12 MUNICIPALITY OF ANCHORAGE d/b/a)
ANCHORAGE TELEPHONE UTILITY a/k/a ATU)
TELECOMMUNICATIONS for the Purpose of)
Instituting Local Exchange Competition)

U-96-89

ORDER NO. 49

13 ORDER DENYING RECONSIDERATION,
14 MODIFYING ARBITRATION RULING TO COMPLY WITH
15 INTERIM FEDERAL REGULATIONS, AND REQUIRING
16 PARTIES TO JOINTLY FILE INTERCONNECTION AGREEMENT

17 BY THE COMMISSION:

18 Summary

19 We deny ACS-AN's¹ request for reconsideration of the portion of Order
20 U-96-89(42)² that requires ACS-AN to continue providing unbundled switching and

23 ¹ACS of Anchorage, Inc. d/b/a Alaska Communications Systems, ACS Local
Service, and ACS (ACS-AN).

24 ²Order Setting Prices for Access to Unbundled Network Elements, Resale and
25 Terms and Conditions of Interconnection, dated June 25, 2004.

1 transport to GCI.³ We modify our arbitration decision on switching and transport to
2 comply with the FCC's⁴ interim rules keeping in place the switching and transport rules
3 in effect on June 15, 2004, pending adoption of interim rules or the next phase of interim
4 rules. We do not require further recalculation of the UNE⁵ loop rate changes as a result
5 of federally mandated changes to our switching and transport rates. With the resolution
6 of reconsideration issues, we require the parties to jointly file an interconnection
7 agreement by October 27, 2004.

8 Background

9 Following our decision on arbitrated rates, terms, and conditions for
10 interconnection, ACS-AN filed for reconsideration.⁶ ACS-AN requested that we
11 reconsider the portion of Order U-96-89(42) that required it to provide unbundled
12 switching and transport to GCI.

13 With respect to switching and transport, we did not adopt specific rates in
14 Order U-96-89(42). We adopted GCI's model but directed the parties to re-run it subject
15 to two specific modifications: (1) modify the GCI model to reflect the purchase of a new
16 switch rather than one with refurbished components, and (2) correct three
17 miscellaneous errors discovered by ACS-AN and undisputed by GCI.⁷

21 ³GCI Communication Corp. d/b/a General Communication, Inc., and d/b/a GCI
22 (GCI).

23 ⁴Federal Communications Commission (FCC).

24 ⁵Unbundled network element (UNE).

25 ⁶ACS-AN's *Petition for Reconsideration of Part IV of Order No. 42 Re: Switching,*
Transport and Signaling, dated July 13, 2004.

26 ⁷Order U-96-89(42) at 51.

1 Due to the pending release of an FCC Order⁸ directly relevant to
2 ACS-AN's request for reconsideration, we extended the reconsideration period by an
3 additional thirty days until September 13, 2004.⁹ We further extended the
4 reconsideration period until September 30, 2004, to allow the parties to comment on the
5 FCC Order adopting interim rules.¹⁰

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7 ⁸Today, we issue a Notice of Proposed Rulemaking (Notice) in which we
8 solicit comment on alternative unbundling rules that will implement the
9 obligations of section 251 (c)(3) of the Communications Act of 1934, as
10 amended, in a manner consistent with the U.S. Court of Appeals for the
11 District of Columbia Circuit's ... decision in *United States Telecom Ass'n v.*
12 *FCC*. We also issue an Order in which we take several steps designed to
13 avoid disruption in the telecommunications industry while these new rules
14 are being written.

15 *In the Matter of Unbundled Access to Network Elements*, WC Docket No. 04-313,
16 *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange*
17 *Carriers*, CC Docket No. 01-338, FCC 04-179, para. 1 (August 20, 2004) (FCC Order or
18 Interim Order).

19 ⁹Order U-96-89(44), *Order Extending Reconsideration Period*, dated
20 August 3, 2004.

21 ¹⁰Order U-96-89(47), *Order Extending Reconsideration Period and Requiring*
22 *Filing*, dated September 13, 2004. In this Order we stated:

23 The FCC Order issued interim rules for the provision and pricing of
24 switching and transport. Specifically, as it affects our proceeding, the FCC
25 determined that switching and transport rates in effect on June 15, 2004,
26 should remain in effect for an interim period "except to the extent that they
are or have been superseded by . . . a state public utility commission order
raising the rates for network elements.

The FCC interim rule appears to preempt our decision on switching
and transport because: (1) the eventual rates that will result from our
arbitration decision were not in effect by June 15, 2004, and (2) the rates
resulting from adoption of the GCI switching and transport modes will not
likely exceed the current switching and transport rates. We seek comment
from the parties on the impact of the FCC interim rule in general with
respect to our recent decisions and specifically with respect to the
apparent requirement that the current switching and transport rates must
remain in place. In addition, we invite the parties to comment on any

(continued . . .)

Discussion

The parties agreed that switching and transport must be provided according to the FCC's interim rules. At present, this means that the switching and transport rates in effect on June 15, 2004, will remain in effect until either: (1) the FCC adopts permanent rules, (2) the next phase of interim rules begins,¹¹ (3) the FCC reconsiders its order, or (4) the courts overturn or modify the FCC's interim rules.¹²

(... continued)

additional complications that may result from implementation of the FCC interim rule, such as its impact on the allocation of common costs between UNEs and the resulting affect on UNE rates. Order U-96-89(47) at 3.

¹¹The FCC stated in its Interim Order that:

These rates, terms, and conditions shall remain in place until the earlier of the effective date of final unbundling rules promulgated by the Commission or six months after Federal Register publication of this Order, except to the extent that they are or have been superseded by (1) voluntarily negotiated agreements, (2) an intervening Commission order affecting specific unbundling obligations (e.g., an order addressing a pending petition for reconsideration), or (3) (with respect to rates only) a state public utility commission order raising the rates for network elements. Second, we set forth transitional measures for the next six months thereafter. Under our plan, in the absence of a Commission holding that particular network elements are subject to the unbundling regime, those elements would still be made available to serve existing customers for a six-month period, at rates that will be moderately higher than those in effect as of June 15, 2004. FCC 04-179, para. 1.

¹²*GCI Response to Order No. 47*, dated September 16, 2004, at 4-5, n. 5.

GCI must point out that while the FCC's interim rules are in effect today, there could be further changes in the law in the near future that the Commission may have to take into account when it approves the final interconnection agreement. ...some CLECs have filed a petition for clarification with the FCC requesting that the FCC clarify that interim rates may be reduced as well as increased as directed by a state commission. . . . Furthermore, some ILECs have filed a petition for mandamus with the United States Court of Appeals for the District of Columbia requesting that the Court vacate the FCC's interim rules. Also, GCI understands that NARUC previously filed a petition for certiorari from the D.C. Circuit's decision in *United States Telecom Ass'n v. FCC*,

(continued . . .)

1 The parties disagree, however, on the repercussions of the FCC decision
2 on the calculation of other UNE rate elements. GCI argued that, because the
3 Commission-approved models for UNE switching and transport and UNE loop are tied
4 together for purposes of allocating common costs, the UNE loop rate must be adjusted
5 for the higher switching and transport rates being imposed by the FCC. GCI also
6 argued that the UNE switching and transport model needs to be modified, in addition to
7 the changes we required in Order U-96-89(42), for the cost of capital, depreciation, and
8 annual cost factors used in the Commission-adopted UNE loop model.

9 ACS-AN opposed GCI's proposal to recalculate the Commission's final
10 UNE loop rate issued in Order U-96-89(46)¹³ for five reasons:

11 1. the FCC did not intend its interim rules concerning switching
12 and transport to have any effect on loop rates;

13 2. there is no rational connection between the UNE loop model
14 used as the basis for rates in this arbitration and the switching and
15 transport rates mandated by the FCC;

16 3. implementing GCI's proposal would result in a change in the
17 UNE loop rate every time there is a modification to the switching and
18 transport rules;

19 4. the time, expense, and effort of GCI's proposal are not worth
20 the minimum changes that would result; and
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23 (. . . continued)

24 359 F.3d 554 (D.C. Cir. 2004) and that petition is still pending in the
25 Supreme Court.

26 ¹³Order Granting Reconsideration, in Part, Clarifying Order, and Setting Revised
Interconnection Rates, dated August 20, 2004.

1 5. it is time to conclude this proceeding.

2 We decline to make further changes to the UNE loop rate we adopted in
3 Order U-96-89(46) at this time. Although the FCC's interim rules require a change in
4 our arbitrated switching and transport rates, it does not require a recalculation of all
5 other rates that may be indirectly affected by changes to the switching and transport in
6 order to properly implement the June 15, 2004 switching and transport rate rollback. As
7 GCI noted, federally mandated changes to the switching and transport rates could result
8 from FCC's reconsideration of its Interim Order, permanent or temporary changes to the
9 federal rules, or remands from various federal courts. We believe that it is appropriate
10 at this time to provide some stability in the loop rate by decoupling it from further
11 fluctuations in switching and transport that may occur from developments outside of our
12 control.

13 We also do not believe it is appropriate, at this time, to readjust the
14 switching and transport model for the higher cost of capital used in the UNE loop model,
15 as requested by GCI. In our arbitration decision we adopted GCI's model and inputs
16 virtually intact¹⁴ (included GCI's proposed cost of capital, depreciation, and annual
17 charge factors). GCI had an opportunity to object to this portion of our Order during the
18 reconsideration period and did not.

19 We further conclude that as a result of the FCC's Interim Order, there is
20 little benefit from re-running the switching model as we instructed the parties to do in
21 Order U-96-89(42). Given the FCC pre-emption of our arbitrated switching and
22 transport rates, the only new usable rates that would be generated would be signaling
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24 ¹⁴We directed the parties to re-run the switching and transport model with two
25 specific, but minor, modifications: (1) modify the GCI model to reflect the purchase of a
26 new switch rather than one with refurbished components, and (2) correct three
miscellaneous errors discovered by ACS-AN and undisputed by GCI.

1 rates. Both parties acknowledge that any potential change in the signaling rates would
2 be slight. As a result, we now require the parties to use the signaling rates proposed by
3 GCI in its August 30, 2003, direct case.

4 Filing of Interconnection Agreement

5 With this final resolution of all reconsideration issues, we require the
6 parties to jointly file an interconnection agreement consistent with our rulings in Orders
7 U-96-89(42) through Order U-96-89(49) by October 27, 2004. We will not accept
8 extension requests unless good cause is clearly shown, as we are intent on concluding
9 this proceeding. The parties are put on notice, we will only accept a fully executed
10 agreement, free of conditions. Both parties have already put substantial resources into
11 preparing the joint interconnection agreement, and we expect a timely and complete
12 filing on October 27, 2004.

13 ORDER

14 THE COMMISSION FURTHER ORDERS:

15 1. The *Petition for Reconsideration of Part IV of Order No. 42 Re:*
16 *Switching, Transport and Signaling*, filed by ACS of Anchorage, Inc. d/b/a Alaska
17 Communications Systems, ACS Local Service, and ACS is denied.

18 2. The arbitration ruling on switching and transport is modified to comply
19 with the Federal Communications Commission interim rules, as more fully discussed in
20 the body of this Order.

1 3. By 4 p.m., October 27, 2004, the parties shall jointly file an
2 interconnection agreement as more fully discussed in the body of this Order.

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4 DATED AND EFFECTIVE at Anchorage, Alaska, this 30th day of September, 2004.

5 BY DIRECTION OF THE COMMISSION
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9 (SEAL)
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